

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CITY OF RIVERSIDE,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

OSCAR BERNAL,

Real Party in Interest.

E062126

(Super.Ct.Nos. RIC1301364,  
RIC1311034 & RIC1311511)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Daniel A. Ottolia,  
Judge. Petition granted.

Christina L. Talley, Interim City Attorney, Gregg M. Gu, Deputy City Attorney;  
Greines, Martin, Stein & Richland, Timothy T. Coates, for Petitioner.

No appearance for Respondent.

Welebir Tierney & Weck, James F. Tierney, III, Justin S. Kim; Gary G. Goldberg, for Real Party in Interest.

In this matter we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

As a rule, allegations of heavy traffic or vehicle speeds are insufficient to show that an installation along a public street may constitute a “dangerous condition” within the meaning of Government Code section 830. (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434.) *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139 does not assist real party in interest, because in that case it was *assumed* that the crosswalk leading to the subject bus stop was dangerous and the case revolved around the placement of the bus stop relative to the crosswalk. Here, there are no allegations that would support a conclusion that the location of the stop was dangerous other than as noted below.

It should not need formal acknowledgment that a bus stop, by its nature, must be located near the street—and that if the physical “stop” is set back, waiting passengers will still be required to migrate towards the curb to signal an oncoming bus and to board. As the court noted in *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 759 (*Cole*), “Of course there is always a risk that a vehicle operated on a highway may leave the road

*by accident.*” (Italics in original.) But after so noting and implicitly recognizing that such a bare possibility does *not* create a “dangerous condition,” the court went on to note that in the case before it, “according to plaintiff’s theory, it was a common practice for drivers to do so here, quite deliberately, in order to bypass stopped traffic.” (*Ibid.*) Here, the pleading contains no basis for a claim that there was any reason other than unpredictable happenstance why a vehicle would leave the roadway in the vicinity of the bus stop. (See *Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1150 [noting nonliability for failing to protect against “freak accident[s]”].)

It has been difficult, even impossible, to find cases offering direct guidance in this matter, but we believe that this is because plaintiff’s theory is so lacking in legal support that similar claims have been rare and readily rejected. The best we can do, as above with respect to *Cole, supra*, 205 Cal.App.4th 749, is to distinguish our case from those in which a “dangerous condition” was found to exist at least potentially. Thus, in *Robison v. Six Flags Theme Parks Inc.* (1998) 64 Cal.App.4th 1294 (*Robison*), tort liability was found appropriate where the plaintiff, visiting defendant’s theme park, was struck by a vehicle while picnicking in a designated area *inside a busy parking lot*. In such circumstances, being struck by a wayward vehicle may be sufficiently common that the landowner is charged with taking precautions against it; not so here.

Finally, we reach real party in interest’s implicit contention, similar to that accepted in *Robison*, that petitioner had a duty to shield the bus stop area by protective

walls, bollards, or other barrier. Where users of the bus stop were at risk only of a freak accident, we decline to impose any such duty.

#### DISPOSITION

Accordingly, the petition for writ of mandate is granted. Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to vacate its order overruling petitioner's demurrer to the complaint, and to enter a new order sustaining the demurrer without leave to amend.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

HOLLENHORST  
Acting P. J.

RICHLI  
J.